IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3620 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MG BRAHMBHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3620 of 1997

MR DN PANDYA for Petitioner

MR LB DABHI A.G.P. for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/06/2004

ORAL JUDGEMENT

In this petition a limited grievance has been made by the petitioner to the effect that though he was entitled to receive compassionate pension, the same has

been denied to him by the respondents. From the record of the petition it appears that the petitioner was serving as Geologist in the Department of Geology and Mining, Government of Gujarat. He was departmentally proceeded against for having remained unauthorizedly absent for a period of more than three years. At the end of the inquiry, the department found him guilty of the charges levelled against him and decided to pass the order regarding compulsory retirement. The said order is not produced on record by the petitioner.

1.1. After he was compulsorily retired from the service, the petitioner appears to have made an application for grant of compassionate pension under the provisions of Rule 274 of the Bombay Civil Services Rules, 1959 ["B.C.S.R." for short"]. However, by order dated 9th February, 1996, the petitioner was informed that after going through the material produced by him and considering his financial position and social status, his request for grant of compassionate pension / gratuity was not acceded to. It is this order, which is now sought to be challenged.

2. According to Mr. D.N. Pandya learned advocate for the petitioner, the respondents have not considered the request of the petitioner in accordance with the guidelines provided by the Finance Department, Government of Gujarat in its Circular dated 4th February, 1976. He has further submitted that the department while rejecting the request of the petitioner has passed its decision on extraneous consideration and they have completely ignored the relevant factors for grant of compassionate pension.

2.1. As against that Mr. L.B. Dabhi learned A.G.P. has submitted that considering the circumstances on record, the decision of the department refusing him to grant compassionate pension to the petitioner is just and proper and deserves no interference by this Court.

3. Having gone through the record of this petition and having carefully considered the rival submissions, it is clear that the petitioner was compulsorily retired from the service by the respondents vide order dated 25th September, 1992 which was challenged by the petitioner before this Court by filing Special Civil Application No. 6896 of 1992. The said petition was dismissed by the learned Single Judge of this Court. The said decision of the learned Single Judge was challenged in the Letters Patent Appeal No. 340 of 1993. In the appeal, the direction with regard to disbursement of the emoluments

to which the petitioner was entitled was made. However, rest of the order of the learned Single Judge was confirmed by the Division Bench. Thus, the order regarding compulsory retirement has now become final. It may also be noted here that the said order was passed by way of punishment in accordance with Rule 6 of the B.C.S.R. as holding the petitioner to be guilty of committing grave misconduct of remaining unauthorizedly absent for almost three years.

3.1. In this petition, the question regarding grant of compassionate pension is concerned. Therefore, the relevant Rule of the B.C.S.R. is required to be reproduced here. Rule 274 deals with compassionate pension. It is as under :-

> "Rule 274: When a Government servant is removed or required to retire from Government service for misconduct or insolvency, or is removed or required to retire from Government service on grounds of inefficiency before he is eligible for a retiring or superannuation pension, Government may, if the case is considered deserving of special treatment, sanction the grant to him of a compassionate pension."

A careful reading of the aforesaid provisions clearly show that in the event of Government servant being removed or retire from the Government service for misconduct or insolvency or for the other grounds mentioned therein, the Government may, if the case is considered deserving of special treatment, sanction the grant to him of a compassionate pension. Thus, it is not a right given in favour of the concerned Government servant, only the Government is conferred upon the discretionary power to award compassionate pension, if it was found that the concerned person was deserving special treatment. The discretion with regard to deciding a Government servant deserving "special treatment" is solely that of the Government. When the Government appears to have exercised discretion properly, this Court cannot interfere with the same and this Court cannot displace the decision of the Government and substitute its own with it.

3.2. In the instant case, the affidavit-in-reply filed by the respondent shows that the petitioner was asked to

furnish details to examine his case for giving special treatment. However, initially there was noncompliance of the request made to him by the department and that delayed finalization of the claim of the petitioner for compassionate pension. It is also stated that though the petitioner had failed to submit the necessary information within the time limit given to him, the material was nevertheless taken into consideration by the Government to find out whether the petitioner deserved the benefit under Rule 274 of the B.C.S.R. It is further stated that after sympathetic consideration and appreciating the facts as furnished by the petitioner and taking into consideration the sound financial and social position of the petitioner, the Government in consultation with the Finance Department, held that the petitioner did not deserve special treatment in granting compassionate pension. This decision was conveyed to the petitioner through respondent no. 3 vide letter dated 9th February, 1996.

3.3. As stated above, grant of compassionate pension is not a matter of right which is conferred upon the concerned Government servant under the provisions of Rule 274 of the B.C.S.R. From the affidavit, it appears that on the basis of the material that was supplied by the petitioner to the department, it had considered the question regarding grant of compassionate pension to the petitioner; and with the consultation of the Finance Department it was found that considering the financial position of the petitioner and social status, he did not deserve grant of compassionate pension. This decision was duly intimated to him by the department. When the relevant material has been examined both by the department as well as by the Finance department of the Government and they have come to the conclusion that the petitioner could not be given benefit under Rule 274 of the B.C.S.R., it is not open for this Court to disturb the said decision. The submission of Mr. Pandya is that for the purpose of deciding this question, the income of his wife, mother and the son was taken into consideration. However, the aforesaid letter does not indicate anything on this line. Further whatever material that has been produced and taken into consideration by the Government is not produced before this Court. Not only that, but when the Government has taken whatever the material that was produced before it by the petitioner, it is difficult for this Court to hold that the discretion was improperly or injudiciously exercised by the respondent. It may also be noted here that the affidavit clearly shows that the petitioner's case was examined by the department in consultation with

the Government. The submission of Mr. Pandya, therefore to the effect that it was the department alone which had taken this decision which is against the Circular dated 4th February, 1976 cannot be upheld. The decision has been intimated to the petitioner only by the department, but it has been taken by the department as well as Finance Department in consultation with each other. If that be so, it is the decision of the Government of Gujarat and it cannot be termed as the decision of the department alone.

In that view of the matter, I see no reason to interfere with the said decision of refusing benefit under Rule 275 of the B.C.S.R. This petition has, therefore, no merit and it deserves to be dismissed and accordingly it is ordered to be dismissed. Rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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